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No. 95-1422

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

FERRELL SECAKUKU, Chairman of the Hopi Tribal Council of the Hopi Indian Tribe, for and on behalf of the Hopi Indian Tribe,

Petitioner,

vs.

ALBERT HALE, President of the Navajo Nation, for and on behalf of the Navajo Nation,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONER

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FURTHER REASONS FOR GRANTING THE WRIT

The Navajo Nation fails to respond, because it has no convincing answer, to the central argument in the Hopi Tribe's petition for a writ of certiorari, which is this: The courts below applied an unprecedented and restrictive test for measuring Indian land use, a test never before applied by any federal court in any reported decision in the 150-year history of cases adjudicating Indian land rights.

The Navajo Nation seeks to justify this restrictive test on the ground that the 1934 statute is unique. It is not. As discussed at length in the Hopi Tribe's petition, and not contradicted by the Navajo Nation, the phrase "other Indians as may be located thereon" is similar in all material respects to language in many executive orders and congressional grants, including those at issue in *Healing v. Jones*, 210 F. Supp. 125 (D. Ariz. 1962), *aff'd*, 373 U.S. 758 (1963). Pet. 10-12.

Nor can the Nation fairly dispute two facts. *Healing* explicitly applied the concept of "Indian title" in determining the Navajo Nation's recognized title to the Hopi Reservation. The courts below explicitly declined to apply the concept of "Indian title" in determining the Hopi Tribe's recognized title to the Navajo Reservation. Pet. 6. This differing treatment cannot be justified or explained, but it can yet be remedied, and the Hopi Tribe asks the Court to do so.

Respectfully submitted,

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